

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1321 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHAVIR CHEMICAL INDUSTRIES

Versus

STATE OF GUJARAT & ORS.

Appearance:

None present for Petitioner

MR SAMIR DAVE for Respondent No. 1 & 2

MR DG CHAUHAN for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/10/96

ORAL JUDGMENT

The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the petitioner. Heard learned counsel for the respondents and perused the Special Civil Application.

2. The petitioner has taken financial assistance

from the Gujarat State Finance Corporation, Ahmedabad. The amount of loan taken was Rs.63,500/-. This amount has been taken in the year 1973. The petitioner could not make payment of some instalments to the Corporation and as such, the Corporation started recovery proceedings in the year 1982 under the Gujarat Public Money Recovery of Dues Act. The Deputy Collector, Recovery, issued notice to the petitioner under the provisions of the aforesaid act and took possession of the factory and industry of the petitioner in the year 1983. Though it appears that subsequently the possession was restored to the petitioner on some understanding, another notice has been issued for attachment of the property by Deputy Collector. At this stage the petitioner has come up before this Court by filing Special Civil Application No.5465 of 1983 and the petitioner has given out in this Special Civil Application that the aforesaid Special Civil Application has been decided in his favour. However, I do not find anything on record in support of this averment. It appears from the averments made by the petitioner in this Special Civil Application that earlier the Special Civil Application has been decided on the ground that the Deputy Collector has no power to take recovery action. It is not in dispute that the Government of Gujarat thereafter appointed an officer on special duty for recovery of dues of the Gujarat State Financial Corporation. The said officer started taking further recovery proceedings against the petitioner. The petitioner has objected to the recovery proceedings by filing objections. The objections of the petitioner were rejected on 23.9.85. The petitioner then filed civil suit for restraining the respondent from forcibly dispossessing the petitioner. It appears that subsequently that suit has been withdrawn and the petitioner filed this Special Civil application before this Court.

3. Though this writ petition has been admitted, the petitioner's counsel has not pressed for interim relief. The learned counsel for the Corporation, Shri D.G. Chauhan made a statement before this court that the whole amount payable by the petitioner to the Corporation against the loan dues has been paid to the Corporation on 7.3.91 and nothing remains due towards the petitioner. From the averments of the facts given above, it is a clear case of attempt on the part of the petitioner to delay recovery of the amount which has been taken by him from the Corporation. Be that as it may. The petitioner has no case whatsoever on merits. The petitioner has committed default in payment of loan to the Corporation. The petitioner has adopted dilatory tactics. The

petitioner, instead of making payment of loaned amount, has dragged the Corporation in litigation and firstly Special Civil Application has been filed, though on technical ground that has been accepted is a different matter, but when the State Government has appointed an Officer competent to make recovery of the Corporation's dues, the petitioner filed civil suit and tried to delay recovery of that amount. That suit has been withdrawn. Then he filed this Special Civil Application. This dilatory tactics adopted by the petitioner for protracting litigation amounts to abuse of process of Court. This Special Civil Application is wholly misconceived and is nothing but only an abuse of process of Court. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

4. It is true that the petitioner is not present, but the Corporation has been called upon in this Special Civil Application by this Court by issuing notice and it would have incurred expenses. The Corporation money is a public money which is meant to be recycled to all the needy entrepreneurs. The dilatory tactics adopted by loanees for repaying the loan taken from the Corporation defeats the public policy and the Court's process becomes an instrument of abuse. The Court would protect only honest and sincere litigants. What exactly the petitioner has done in the present case is that he has adopted dilatory tactics which has resulted in delay of recovery of loaned amount taken by him from the Corporation and consequently recycling of the same to all the needy entrepreneurs has been affected. Not only this, the Corporation's public money has to be spent to defend this litigation and as such, it is a case where exemplary cost has to be imposed upon the petitioner. The petitioner is directed to pay Rs.2,000/- (two thousand) by way of costs of this petition to the Gujarat State Finance Corporation.

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(sunil)